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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,266	03/12/2001	Steven C. Miller	13032US01	8546
23446	7590	06/24/2005	EXAMINER	
MCANDREWS HELD & MALLOY, LTD			WOZNIAK, JAMES S	
500 WEST MADISON STREET			ART UNIT	PAPER NUMBER
SUITE 3400			2655	
CHICAGO, IL 60661				

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/681,266	MILLER, STEVEN C.	
	Examiner	Art Unit	
	James S. Wozniak	2655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 March 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-25 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 February 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. In response to the office action from 10/7/2004, the applicant has submitted an amendment, filed 3/30/2005, amending Claims 1, 7, 13, 20, and 23, while arguing to traverse the art rejection based on the limitations regarding a previously determined medical device and assigning a function to a device (*Amendment, Pages 9-10*). Applicant's arguments have been fully considered, however the previous rejection is maintained due to the reasons listed below in the response to arguments.

Response to Arguments

2. Applicant's arguments have been fully considered but they are not persuasive for the following reasons:

With respect to **Claim 1**, the applicant argues that Wang et al (*U.S. Patent: 6,642,836*) fails to teach utilizing a previously determined medical device (*Amendment, Page 9*), however the examiner notes that in response to applicant's arguments, the recitation "previously determined medical device" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or

structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Even if this limitation was recited in the body of the claim, the examiner notes that the medical devices taught by Wang are predetermined since the control device taught by Wang is provided a list of controllable devices upon start-up (*Col. 5, Lines 7-17*).

Also with respect to **Claim 1**, the applicant argues that Wang fails to teach assigning a function to an input device (*Amendment, Page 10*). The examiner notes that Wang teaches a means for assigning a function in the form of a control signal relating to a specific medical device task to a particular device based on a selection command (*Col. 8, Lines 21-46*). Thus, Wang teaches a means for assigning a function to a medical device based upon control and selection commands.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the embodiment of the present invention as related to a medical imagining device, wherein functions are assigned to specific foot pedals as stated on Page 12) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The examiner further notes that a claim amendment clarifying the scope of the present invention including: controlling a medical imaging device having a plurality of foot pedals, receiving a first verbal command related to a foot pedal function, receiving a second verbal command for selecting a foot pedal and assigning the function related to the first speech

command to the selected foot pedal, and controlling the assigned medical imaging device function when operated by the specified foot pedal, may overcome the prior art of record.

With respect to the arguments directed towards independent **Claims 7, 13, 20, and 23** see the response in regards to Claim 1.

The dependent claims further limit rejected independent claims, and thus, also remain rejected.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1, 3-5, 7, 9-11, 13, 14, and 16-18** are rejected under 35 U.S.C. 102(e) as being anticipated by Wang et al (*U.S. Patent: 6,642,836*).

With respect to **Claims 1, 7, and 13**, Wang et al recites:

A microphone for receiving a plurality of verbal commands from an operator (*Fig. 2, Element 34*);

A system control and speech recognition processor for:

Receiving a first verbal command from said microphone (*selection command, Col. 5, Lines 19-37*),

Selecting a function (*control commands, Col. 5, Lines 19-37*),

Receiving a second verbal command from said microphone (*control commands, Col. 5, Lines 19-37*), and

Assigning said function to an input device (*routing a control command to a device chosen by a selection command, Col. 8, Lines 21-46*); and

An input console for controlling said function assigned to the input device when activated by said operator (*manual input means, Col. 2, Lines 33-51*).

Displaying the assigned function on an input display (*Col. 10, Lines 1-2*).

With respect to **Claims 3, 9, and 16**, Wang recites:

The system control and speech recognition processor is programmed to recognize a verbal command as a predetermined verbal command (*Col. 2, Line 52- Col. 3, Line 13*).

With respect to **Claims 4, 10, and 17**, Wang teaches recognition of predetermined commands, as applied to claim 3, which would include function selection commands, as applied to Claim 1.

With respect to **Claims 5, 11, and 18**, Wang recites:

The input console is a foot-input console (*Col. 2, Lines 23-41*).

With respect to **Claim 14**, Wang teaches the microphone applied to Claim 1.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2655

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 2, 6, 8, 12, 15, and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al in view of Brant et al (*U.S. Patent: 6,278,975*).

With respect to **Claims 2, 8, and 15**, Wang teaches the means of speech control of medical devices that is capable of recognizing a first and second command and assigning a control command to a particular device, as applied to Claims 1 and 7. Wang does not specifically suggest speech control of a medical imaging device and display, however speech control of such systems is well known in the art as is evidenced by Brant (*Col. 3, Lines 38-45*).

Wang and Brant are analogous art because they are from a similar field of endeavor in speech controlled medical systems. Thus, it would have been obvious to a person of ordinary skill in the art, at the time of invention, to modify the teaching of Wang with the means of speech control for a medical imaging system as taught by Brant to eliminate delays resulting from manual control of medical devices, thus providing for a more time efficient surgical process (*Col. 1, Lines 40-47, and Col. 2, Lines 7-8*).

With respect to **Claims 6, 12, and 19**, Brant teaches the speech control of a medical imaging device and further suggests that the imaging device is an ultrasound (*Col. 8, Lines 47-49*).

7. **Claims 20-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang et al in view of Cox (*U.S. Patent: 6,192,339*).

With respect to **Claim 20**, Wang teaches the means of speech control of medical devices that is capable of recognizing a first and second command and assigning a control command to a particular device, as applied to Claim 1. However, in the system and method disclosed by Wang, the first speech command corresponds to a particular device and the second command corresponds to an associated function. Wang does not teach an alternative embodiment in which a function command can be issued before a device selection is specified, however, such a configuration is well known in the art, as is evidenced by Cox (power command request “turn on” followed by a specified device “VCR,” Col. 7, Lines 1-12).

Wang and Cox are analogous art because they are from a similar field of endeavor in speech-controlled systems. Thus, it would have been obvious to a person of ordinary skill in the art, at the time of invention, to modify the teachings of Wang with the method of routing a speech command to a particular device by stating a function command prior to a device selection as taught by Cox in order to implement recognition of more natural speech commands by allowing a user to additionally control multiple applications (*Col. 1, Lines 47-48*) via speech using a more natural command form (“*Turn on VCR*” instead of “*VCR turn on*”).

With respect to **Claim 21**, Wang further teaches the microphone applied to Claim 1.

Claim 22 contains subject matter similar to Claim 5, and thus, is rejected for the same reasons.

Claim 23 contains subject matter similar to Claim 20, and thus, is rejected for the same reasons.

Claim 24 contains subject matter similar to Claim 21, and thus, is rejected for the same reasons.

Claim 25 contains subject matter similar to Claim 22, and thus, is rejected for the same reasons.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1:136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Wozniak whose telephone number is (571) 272-7632 and email is James.Wozniak@uspto.gov. The examiner can normally be reached on Mondays-Fridays, 8:30-4:30.

Art Unit: 2655

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached at (571) 272-7582. The fax/phone number for the Technology Center 2600 where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the technology center receptionist whose telephone number is (703) 306-0377.

James S. Wozniak
6/21/2005



W. R. YOUNG
PRIMARY EXAMINER